

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3 MICHAEL MAJOR, et al.,

4 Plaintiffs,

5 v.

6 STOCKER, SMITH, LUCIANI & STAUB,
7 et al.,

8 Defendants.

9
10 No. CV-09-0140-FVS

11 ORDER

12 **THIS MATTER** comes before the Court on Plaintiffs' motion for
13 reconsideration of the Court's June 18, 2009 order (Ct. Rec. 34) and
14 motion for relief from judgment (Ct. Rec. 39). Plaintiffs are
15 proceeding pro se. Defendants Stocker, Smith, Luciani & Staub and
16 Bohrnsen & Stowe are represented by Steven Robert Stocker, Defendant
17 Maxey Law Office is represented by Andrew Charles Bohrnsen, and
18 Defendant Mark D. Hodgson, attorney at law, is representing himself.

19 **PROCEDURAL BACKGROUND**

20 On June 18, 2009, the Court entered an order denying, as moot,
21 Plaintiffs' motion to disqualify Judge Whaley, denying Plaintiffs'
22 motions for an order of default, for summary judgment, and for
23 sanctions and vacating and resetting the hearing on Defendants' motion
24 to dismiss. (Ct. Rec. 30). Plaintiffs subsequently filed a motion
25 for reconsideration (Ct. Rec. 34) and a motion for relief from
26 judgment based on new evidence (Ct. Rec. 39).

1 **DISCUSSION**2 **I. Reconsideration**

3 It is a basic principle of federal practice that "courts
 4 generally . . . refuse to reopen what has been decided"
 5 *Messinger v. Anderson*, 225 U.S. 436, 444 (1912); see, *Magnesystems, Inc. v. Nikken, Inc.*, 933 F.Supp. 944, 948 (C.D. Cal. 1996). The
 7 Federal Rules of Civil Procedure do not mention a "motion for
 8 reconsideration." Even so, a "motion for reconsideration" is treated
 9 as a motion to alter or amend judgment under Rule 59(e) if it is filed
 10 within ten days of entry of judgment. *United States v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992). Otherwise, it is treated as
 12 a Rule 60(b) motion. See, *United States v. Clark*, 984 F.2d 31, 34 (2d Cir. 1993).

14 A motion for reconsideration should not be used "to ask the Court
 15 to rethink what it has already thought." *Motorola, Inc. v. J.B. Rodgers Mech. Contrs., Inc.*, 215 F.R.D. 581, 582 (D. Ariz. 2003).
 17 See, also, *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir. 1988) (holding
 18 denial of a motion for reconsideration proper where "it presented no
 19 arguments that had not already been raised in opposition to summary
 20 judgment"); *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985)
 21 (same). "Motions for reconsideration serve a limited function: to
 22 correct manifest errors of law or fact or to present newly discovered
 23 evidence." *Publisher's Resource, Inc. v. Walker Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (quoting *Keene Corp. v. International Fidelity Ins. Co.*, 561 F.Supp. 656, 665-666 (N.D. Ill. 1982), aff'd, 736 F.2d 388 (7th Cir. 1984)); see, *Novato Fire*

1 *Protection Dist. v. United States*, 181 F.3d 1135, 1142 n. 6 (9th Cir.
2 1999), cert. denied, 529 U.S. 1129, 120 S.Ct. 2005 (2000).

3 Here, Plaintiffs moved for reconsideration and relief from
4 judgment over ten days after the Court entered its June 18, 2009
5 order. Plaintiffs' requests are thus Rule 60(b) motions.
6 Reconsideration is available under Rule 60(b) upon a showing of
7 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
8 discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied
9 or discharged judgment; or (6) any other reason justifying relief.
10 Fed. R. Civ. P. 60(b). Based on Plaintiffs' assertions, relief is
11 unavailable under Rule 60(b) in this case.

12 **II. Motion for Reconsideration (Ct. Rec. 34)**

13 Plaintiffs challenge section III and IV of the Court's June 18,
14 2009 order. (Ct. Rec. 30).

15 In section III of its June 18, 2009 order, the Court denied
16 Plaintiffs' June 3, 2009 motion for summary judgment. (Ct. Rec. 30).
17 The Court determined that Plaintiffs failed to follow the Court's
18 local rules pertaining to motion practice and motions for summary
19 judgment. (Ct. Rec. 30). The Court specifically found that
20 Plaintiffs did not file a separate memorandum setting forth the points
21 and authorities relied upon in support of the motion and failed to set
22 forth separately from the memorandum of law, and in full, the specific
23 facts relied upon in support of the motion. *Id.* In section IV of its
24 order, the Court denied Plaintiffs' motion for sanctions. *Id.* The
25 Court held that while Plaintiffs cited "CR 56(g)" in support of their
26 sanctions request, Plaintiffs failed to allege or show that an

1 affidavit filed by Defendants was submitted in bad faith or solely for
2 delay. *Id.* Plaintiffs argue these findings by the Court are
3 unsupported. (Ct. Rec. 34).

4 While the Court acknowledges that Plaintiffs did file a pleading
5 entitled "Memorandum of Facts, Points, and Authorities in Support of
6 Plaintiffs' Motion for Summary Judgment" on June 16, 2009 (Ct. Rec.
7 24), this memorandum contained a total of two sentences and, as
8 previously concluded by the Court, does not comply with the Court's
9 local rules pertaining to motion practice and motions for summary
10 judgment. With respect to Plaintiffs' motion for sanctions, as
11 previously indicated by the Court, Plaintiffs' motion and memorandum
12 (Ct. Rec. 25 and 26) fail to demonstrate that an affidavit filed by
13 Defendants was submitted in bad faith or for delay. See Fed. R. Civ.
14 P. 56(g). Plaintiffs' pleading entitled "Plaintiffs' Response to
15 Defendants' Motion to Dismiss/Summary Judgment and Memorandum in
16 Support of Both this Response and Plaintiffs' Motion for CR 56(g)
17 Sanction" (Ct. Rec. 28) additionally fails to assert an affidavit
18 filed by Defendants was submitted in bad faith or for delay.

19 The Court properly denied Plaintiffs' motions for summary
20 judgment and for Rule 56(g) sanctions. Accordingly, Plaintiffs have
21 not provided a proper basis for this Court to reconsider its June 18,
22 2009 order under Rule 60(b).

23 **III. Motion for Relief from Judgment (Ct. Rec. 39)**

24 Plaintiffs' July 31, 2009 motion for relief from judgment
25 requests that this Court, under Rule 60(b), grant them the relief they
26 have requested in their complaint based on "new evidence." (Ct. Rec.

1 39). Rule 60(b) permits a court to relieve a party from a judgment or
2 order administered by that court. Fed. R. Civ. P. 60(b). Plaintiffs'
3 motion does not request that this Court relieve Plaintiffs from an
4 order or judgment this Court issued.¹ Accordingly, the motion is not
5 proper.

6 Based on the foregoing, **IT IS HEREBY ORDERED** as follows:

7 1. Plaintiffs' motion for reconsideration (**Ct. Rec. 34**) is
8 **DENIED**.

9 2. Plaintiffs' motion for relief from judgment (**Ct. Rec. 39**) is
10 **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this Order and furnish copies to counsel and to Plaintiffs.

13 **DATED** this 18th day of August, 2009.

14 _____
15 S/Fred Van Sickle
16 Fred Van Sickle
17 Senior United States District Judge
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24 ¹In fact, the "new evidence" submitted in Plaintiffs' motion
25 for relief from judgment appears to have no relevance to the
26 issues raised in Plaintiffs' complaint. The complaint in this
lawsuit contends that the "central issue" is "the defendant
lawyers' corruption of the chief judge . . . in [a] previous
case." (Ct. Rec. 1 at 4). The facts asserted in the motion for
relief from judgment do not appear to pertain to this issue.